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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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09/501,716

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Kazuichi Ooe

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EXAMINER

TSEGAYE, SABA

ART UNIT

PAPER NUMBER

2616

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|-----------|---------------|
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3 MONTHS

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/501,716 | OOE, KAZUICHI | |
| | Examiner | Art Unit | |
| | Saba Tsegaye | 2616 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,6 and 8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,6 and 8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>06/07/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This Office Action is in response to the amendment filed 03/08/07. Claims 1, 2, 6 and 8 are pending. Currently no claims are in condition for allowance.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 6 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim recites "computer readable medium" which is not embodied with a computer program. The claim is directed to a function descriptive material not stored on a computer readable medium and not computer executed, wherein the executable instruction's/program's functionality is not realized as it is not stored on a computer readable medium, whereas, a computer-readable medium embodied with a computer program defines structural and functional interrelationships between the computer program and the rest of the computer, which allows the computer program's functionality to be realized.

Claim Rejections - 35 USC § 103

3. Claims 1, 2, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reynolds (US 5,742,499).

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Regarding claims 1, 2 and 6, Reynolds discloses a communications method of performing communications by switching over a plurality of communication modes (a method for selecting one communication mode from a plurality of communication modes), comprising:

measuring a communication performance between a plurality of communication devices (multi node computer system 10 comprised of a plurality of processors (also called CPU)) each comprising a CPU and a memory (processor's memory; see column 5, lines 25-27; column 8, lines 15-30) and being connected via a network (103) by measuring a communication time of each of the communication modes of one of the communication devices under a plurality of communication conditions (a particular operation employing a selected communication mode within a multimode computer system; selecting an optimal communications mode at operation run-time. See abstract; column 5, lines 11-46);

obtaining a condition-based optimum communication mode in which the communication time in one of the communication modes of the one of the communication devices, exceeds a communication time of other communication mode per communication condition of the one of the communication devices (see fig 4; steps 409-411; column 8, lines 31-45);

selecting the condition-based optimum communication mode in accordance with the communication condition when in communications, and thus performing the communications between the communication devices based on the condition based optimum communication mode of the one of the communication devices (see fig 4; steps 409-416; column 8, lines 31-59).

Reynolds, however, does not disclose a communications method that comprises a version of the operating system.

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Reynolds discloses selecting a mode of communication from a plurality of modes of communication for performing a **plurality of operations** so as to optimize a performance characteristic of a **multi-node** computer system; and performing the particular operation within the multi-node computer system using the selected mode of communication. Each particular operation requires communication among the nodes. Each operation requires the use of a communication mode (for example broadcast; scatter operation). The broadcast operation requires the distribution of a message to a plurality of nodes. The scatter operation distributes a message only to a certain numbers of nodes.

As known, difficulties arise when a transmitter to send a data packet to receivers using a different version of an operating system. It is also known that to perform compatibility checking, the transmitter and the receivers exchange their software numbers. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a version of an operating system of the communication devices (nodes) in the broadcasting system of Reynolds in order to increase transmission speed by checking compatibility between the transmitter and the receivers.

Regarding claim 8, Reynolds discloses a communications device further comprising; a storage unit storing the condition-based optimum communication mode (column 8, lines 15-30),

wherein the performance measuring module measures the communication performance in the communications with other communications device if not stored with the condition-based optimum communication mode in the communications with the other communications device

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when performing the communications with the other communications device (column 8, line 15-33), and the optimum mode-obtaining module obtains the condition-based optimum communication mode (column 8, line 15-33).

4. Claims 1, 2 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lederman (US 5,448,625).

Regarding claims 1, 2 and 6, Lederman discloses a communications method of performing communications by switching over a plurality of communication modes (**one mode** in which two parties are in communication with each other and **a different mode** in which the communication is interrupted and messages selected by a ad service), comprising:

measuring a communication performance between a plurality of communication devices each comprising a CPU and a memory (see fig. 2) and being connected via a network by measuring a communication time of each of the communication modes of one of the communication devices under a plurality of communication conditions (time of call is divided between one mode in which the parties are in communication with each other and different mode in which the communication is interrupted);

obtaining a condition-based optimum communication mode in which the communication time in one of the communication modes of the one of the communication devices, exceeds a communication time of other communication mode per communication condition of the one of the communication devices (the mode may alternate between message intervals whose duration is determined by ad message length and communication intervals whose length is determined by a talking time timer);

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selecting the condition-based optimum communication mode in accordance with the communication condition when in communications, and thus performing the communications between the communication devices based on the condition based optimum communication mode of the one of the communication devices (during any telephone call, there are one or multiple back-and-forth mode changes between conversation or other communication and ad insertion; column 2, lines 39-60; column 22 lines 4-37).

Lederman fails to disclose a communications method that comprises a version of the operating system.

However, difficulties arise when a transmitter to send a data packet to receivers using a different version of an operating system. It is also known that to perform compatibility checking, the transmitter and the receivers exchange their software numbers. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a version of an operating system of the communication devices in the advertising method of Lederman in order to increase transmission speed by checking compatibility between the transmitter and the receivers.

Response to Arguments

5. Applicant's arguments with respect to claims 1, 2, 6 and 8 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saba Tsegaye whose telephone number is (571) 272-3091. The examiner can normally be reached on Monday-Friday (7:30-5:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi H. Pham can be reached on (571) 272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ST
April 12, 2007


CHI PHAM
SUPERVISORY PATENT EXAMINER

